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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Rwanda submitted by Mr. René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of resolution S-3/1 of 25 May 1994

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Introduction

1. In accordance with the mandate entrusted to him by the Commission on Human Rights in its resolution S-3/1 of 25 May 1994 and extended for the second time by resolution 1996/76 of 23 April 1996, the Special Rapporteur visited Rwanda from 18 to 21 October 1996, as part of the follow-up to his mission, and, from 6 to 10 December 1996, to investigate the human rights situation following the mass return of refugees from the exodus.

2. The Special Rapporteur feels compelled at this point to draw attention to the difficulties he is experiencing with the Centre for Human Rights, particularly the Special Procedures Branch, in carrying out his mission. As will be noted, the last field visit in 1995 took place at the beginning of December 1995 and the first visit in 1996, following the extension of his mandate in March 1996, did not take place until the second half of October, practically a 10-month interval between field visits. Several planned visits did not come to fruition. To mention only two cases, a first visit, scheduled for 13 to 18 May 1996, did not take place, although everything had already been approved, and it was only three days to the departure date. Two reasons were given. Firstly, the Special Rapporteur was asked to postpone his visit until the return of the head of the Field Operation, who was to travel to Burundi. Then, when the Special Rapporteur rightly refused, as he was unavailable at the suggested time, he was told that not only would he have to bring his departure forward, but also that he would have to change his itinerary. Because of other commitments, the visit could not be carried out. The second visit, scheduled from 11 to 14 August 1996, had to be cancelled for lack of resources. The Special Rapporteur was given an advance of $450 for subsistence expenses, which actually amounted to $1,050, leaving him to pay $600 himself.

3. Two points should be made clear: (a) at a time when the Human Rights Operation in Rwanda was advising staff not to travel on Cameroon Airlines aircraft and to be careful in their choice of airlines, the Special Rapporteur was forced to travel by Cameroon Airlines; this is particularly regrettable in that experts and special rapporteurs have no insurance coverage; (b) the Special Rapporteur's budget of $69,770 for the current financial year had not yet been touched, although the year was drawing to a close. If the United Nations financial criteria were to be formulated and applied in this way, they would preclude third-world experts, particularly those from Africa, from working for the Organization, especially since the position of special rapporteur is purely honorary.

4. The two field visits actually carried out were therefore hard won. The zeal displayed by staff suggests competition between the High Commissioner for Human Rights and the Special Rapporteur. For example, in an attempt to prevent the Special Rapporteur from making his last visit, Geneva first pleaded lack of funding, then claimed that it would be "lèse-majesté" to make a trip at the same time as the High Commissioner.

5. It is interesting to note that, whereas it has traditionally been States which have placed obstacles in the way of special rapporteurs, in Rwanda it is actually various United Nations services that are preventing the Special Rapporteur from carrying out his mandate. It is to be hoped that the

High Commissioner, whom the Special Rapporteur has approached more than once, will finally put an end to this situation, which has gone on too long.

6. In the course of his two visits, the Special Rapporteur met the following prominent figures:

(a) Prominent national and local figures: Mr. Pierre-Célestin Rwigema, Prime Minister; Mr. Anastase Gasana, Minister for Foreign Affairs and Cooperation; Mr. Ignace Karuhije, Prefect of Ruhengeri; and the burgomasters of the communes of Kicukiro (Kigali-City prefecture), Cyumba (Byumba prefecture) and Isumo (Kibungo prefecture);

(b) Prominent non-Rwandan figures: Mgr. Juliusz Janusz and Mgr. Nguyên Van Tôt, Apostolic Nuncio and Deputy Apostolic Nuncio in Rwanda, respectively; representatives of the International Committee of the Red Cross and of the High Commissioner for Refugees; Judge Honoré Rakotomanana, Deputy Prosecutor of the International Criminal Tribunal for Rwanda and his closest colleagues.

7. During his visit to Rwanda, the Special Rapporteur also held working meetings with Mr. Javier Zuñiga, the new head of the Human Rights Field Operation in Rwanda, with human rights observers in charge of the Operation's various units and sub-units (monitoring; administration of justice and legislative reform; prisons and detention centres; education and development; situation of women, children and Twas; and return and reintegration of refugees). During his first visit, the Special Rapporteur visited the teams of observers in the field in Gisenyi and Ruhengeri prefectures, as well as in Kibungo and Byumba prefectures. On that occasion, he also visited the Gisenyi Court of First Instance, where he spoke with two judges who had recently been assigned there, as well as the Zairian refugee camp in Gisenyi and the transit centres for Rwandan returnees in Nkamira (Gisenyi prefecture) and Gihembe (Byumba prefecture). During his second visit, the Special Rapporteur visited the Gitagata Rehabilitation and Production Centre in Bugesera, Rural-Kigali prefecture, and the returnees' resettlement site in the commune of Kicukiro on the same day, as well as the Bukora ranch in Kibungo prefecture, the Gihembe and Kivuye transit centres in Byumba prefecture and the Nyakarambi transit centre in Kibungo prefecture.

8. During his first visit, the Special Rapporteur also met Judge Damien Vandermeersch, of the Brussels Crown Prosecutor's Office (24 October), to ask about progress in proceedings instituted by the Belgian authorities against presumed perpetrators of the genocide.

9. The Special Rapporteur would like to express his sincere thanks to all the prominent persons who received and supported him in carrying out his mission. The talks he held and the visits he made in the field enabled him to assess the situation regarding the genocide, current human rights violations and the return of refugees to Rwanda.

I. GENOCIDE

10. Genocide and other crimes against humanity committed in Rwanda since April 1994 will continue to be of concern to the international community for

some time. For this reason, they are again the central focus of this report. There are two separate aspects to this question: the progress made in investigating these crimes and the proceedings against the presumed perpetrators.

A. Inquiry into the genocide

11. The inquiry into the genocide is taking its course. As in the preceding report (E/CN.4/1996/68), the progress made can be assessed from two standpoints: the general human rights situation, particularly the underlying causes of human rights violations in Rwanda, and the special situation of vulnerable groups.

1. General situation: the causes of the genocide

12. Two years after it occurred, the genocide as a phenomenon in the etymological sense, continues to generate numerous works and studies and much research supplementing the reports of human rights observers. All in all, these investigations tend to confirm the original hypothesis contained in the preliminary report (E/CN.4/1995/7), particularly regarding the underlying causes of human rights violations, which represent the main focus of this report.

13. These causes are many, varied and complex. For the sake of simplicity, they are divided here, without any scientific pretensions, into three main categories: politico-historical, economic and socio-cultural.

(a) The politico-historical causes

14. Although it is not possible to establish any genuine order of precedence among the various causes, the politico-historical dimension seems to be the most important because of its conditioning and determining effect on the others. It is both political and historical in that the basis of the conflict between the two groups, Hutu and Tutsi is political - i.e. power - and is rooted in the history of this people. Responsibility lies less with the ancestors of past centuries than with the authorities of more recent periods, firstly colonization and then the African regimes.

15. Although pre-colonial Rwanda was inhabited by the same peoples as are found there today, namely, the Hutus (of Bantu origin), the Tutsi (of Hamitic descent) and the Twas (pymoid type), these three peoples, organized in more or less autonomous kingdoms, did not constitute opposing dominant and dominated "ethnic groups". These kingdoms were bound to the Mwami (king) within a feudal monarchic system by a contract of patronage known as "ubuhake". Moreover, the division of labour whereby Hutus were farmers and Tutsis herders, which placed economic power in the hands of the latter, did not become established as a fixed and closed system like the caste system. It was also possible to move from one category to the other, as in the case of a Tutsi who has lost his cattle, i.e. his wealth, and becomes a Hutu, or a Hutu who, having acquired enough cattle, becomes a member of the Tutsi group. It is reported that, during an impromptu census, the son of a king (Tutsi) who was one cow short of the ten-head of cattle required would have been classed as a Hutu if he had not been made a gift of the missing animal.

16. It was the colonizers, first the Germans then the Belgians, who as part of their policy of divide and rule, depended on the Tutsi group to govern the conquered territory under a system of indirect rule, thus upsetting the existing social equilibrium. The resulting imbalance gradually became more marked, marginalizing the Hutus. Moreover, in order to give an ideological flavour to their concoction and thus consolidate it, they created the myth of the superiority of the Tutsis over the two other ethnic groups, thus institutionalizing the ethnic division. This ideology of discrimination was not only reflected in the indication of ethnic group on identity cards, but also reinforced in the schools. The Belgian colonialists supported the Hutu social revolution only because they felt betrayed by their Tutsi allies' demands for independence.

17. With independence, the political dimension became more closely linked with the ethnic dimension, so that the conflict became essentially one of opposition between Hutus/republicans and Tutsis/feudal-monarchists. The new regime, presided over successively by Grégoire Kayibanda and Juvénal Habyarimana, regardless of the official line on national unity, completed the work of the colonialists by exacerbating ethnic rivalries and using them as a basis for its own survival. This policy of ethnic discrimination was aimed mainly at the Tutsi group. It manifested itself, in particular, through the introduction of quotas in schools, the civil service and government and exclusion from the army, the police and information services. However, although the Tutsis were the main target of this discriminatory policy, the other groups were not spared. The Twas, and even some Hutus, also suffered, as the Habyarimana regime adopted a policy of regionalism, favouring the northern Hutu (Gisenyi and Ruhengeri) - the Banduga - at the expense of those in the south and the centre - the Bakiga; it was in these regions that the opposition parties emerged in 1990-1991.

18. The Rwandan conflict is thus seen as a political conflict with a strong ethnic flavour. But the political dimension was based on economic factors.

(b) <u>The economic causes</u>

19. The economic causes, which can be reduced to the interaction between underdevelopment - an inherent defect in African countries - and violence, do not call for any special analysis. Suffice it to say that the situation in Rwanda is exacerbated in particular by two major handicaps: it is a country which is both land-locked and overpopulated. As a land-locked country, it has long been dependent on the aid of donor States and is one of the least developed countries. Poverty in general, and food insecurity in particular, have been heavily exploited by those in power, who have dazzled the executioners with promises of a better world through the acquisition of the property and wealth of the victims, as evidenced by the systematic looting which accompanied the massacres.

20. Overpopulation, which should be emphasized here, is a fact beyond question. At the outbreak of hostilities, a population of 7,700,000 was living in a tiny area of 26,338 km^2 - a population density of 300 per km^2. Rwanda has the highest population density in the world after Bangladesh. This overpopulation gives rise to frequent disputes over land and its use.

21. These disputes are exacerbated by the country's agricultural and pastoral tradition: the Hutu are mainly agriculturalists, the Tutsi herders and the Twa hunters. The situation is further complicated by the system of land use, where properties are laid out, not in villages as everywhere else in Africa, but around hills. For its inhabitants, each hill is both a working and a living area, so that any land dispute inevitably becomes personalized. Any attempt to occupy a neighbour's field is immediately seen as an attack on his person. The many disputes which arise may even pit family members against one another and result in loss of life, particularly when Hutu farmers are ranged against Tutsi herders in search of more grazing land.

22. The small size of the country was actually used as a pretext by the Rwandan authorities in refusing to permit former refugees to return. The return of former refugees was not unrelated to the 1990 crisis. The former refugees, many of whom had been born in exile, had repeatedly, through associations formed abroad, expressed the desire to return to Rwanda. While acknowledging the legitimacy of this desire, those in power at the time had neither the political will nor the courage to give them satisfaction. It was these refugees who provided the recruits for the units which formed the backbone of the Rwanda Patriotic Army (RPA), the armed wing of the Rwanda Patriotic Front (RPF), which began attacking government troops in October 1990. This problem had not been solved when the massacres occurred in 1994, despite the Agreement concluded in Arusha on 9 June 1993 between the Rwandan Government and the RPF on the repatriation of Rwandan refugees and the resettlement of displaced persons. To this extent, the war waged by the former refugees and the failure to implement the Arusha Peace Agreement are also at the root of the Rwandan crisis, of which the socio-cultural dimension was the essential ideological catalyst.

(c) The socio-cultural causes

23. For their own political ends, successive regimes and systems gradually conditioned the population to psychological and social acceptance of ethnic discrimination. This conditioning took place in particular in the family and, above all, in the schools.

24. Family education played a not insignificant role, in that it is the family that has the heavy responsibility of moulding the child's attitudes from an early age and making him receptive to ethnic discrimination. Many witnesses report that parents teach their children very early on that members of the other ethnic group are their enemies. One group demonized the other. The Hutu, for example, identified the Tutsi with "snakes". In addition, individuals who dared to enter into mixed marriages were excluded from the family.

25. The schools, for their part, took it upon themselves to develop actual theories of ethnic differences, based on a number of allegedly scientific data which were essentially morphological and historiographical. In the first case, the two main groups can be differentiated by appearance, as the Tutsi are "long", whereas the Hutu are "short"; the Tutsi are handsome, genuine "black-skinned Europeans", while the Hutu are "ugly", genuine "Negroes". The fact that the Hutu occupied the country before the Tutsi makes them indigenous, whereas the Tutsi, as descendants of Europeans, are invaders.

These purportedly scientific data inevitably created a psychosis of fear and mistrust which gradually became a veritable culture of mutual fear and led to another theory, that of pre-emptive self-defence based on the "kill or be killed" principle. This theory was a major factor in the 1994 genocide which claimed many victims, including vulnerable groups.

2. Special situation: vulnerable groups

26. While it is true that vulnerable groups, whether forced to do so or not, participated to varying degrees in the genocide and other crimes against humanity, the majority of them - women, children and Twas - were actually victims.

(a) Women

27. The situation of Rwandan women as victims is deplorable and continues to be so, despite the remedial measures taken.

28. Women seem to have been, and continue to be, the main victims, given the outrages to which they were subjected and the continuing after-effects. Firstly, many women have found themselves alone or widowed as a result of the genocide and hostilities. They have become de facto heads of families, compelled to minister to the needs of their families. According to the review Dialogue (October 1996), 70 per cent of the heads of families in Rwanda are women, half of whom are widows. Most of them are destitute and, try as they might, are unable to provide for their families. In his preceding report, the Special Rapporteur stated that rape had been used as a weapon of war and its consequences, particularly sexually transmissible diseases and unwanted children, were a major social concern.

29. Last but not least, rape as a weapon of war, has given rise to serious psychological and social problems. This diagnosis presented in the preceding report (E/CN.4/1996/68) was confirmed in a recent in-depth survey by three international human rights organizations: Human Rights Watch/Africa, Human Rights Watch Women's Rights Project and the International Federation of Human Rights Leagues. The report published following this survey shows that raped women are ostracized and isolated. They are too embarrassed or ashamed to seek medical assistance. This has led to the widespread practice of illegal abortion. In the circumstances, it is difficult to determine accurately the number of women raped and infected with the AIDS virus. However, according to the report, this number can be assumed to be high, given the situation prevailing before the hostilities. A study conducted by the Ministry of Health estimated that 25 per cent of the population was infected and up to 35 per cent of former FAR members, who played a leading role in acts of sexual abuse. In the case of women who have given birth after being raped and their babies, the situation is even more tragic. The above-mentioned report describes it as follows:

> "Often, women refused to register themselves by name at the hospital, preferring to remain anonymous. Some then abandoned their babies at the hospital two or three days after delivering. Many asked for a doctor of the same ethnicity as themselves. One woman handed over her baby to the Ministry of Family and the Promotion of Women, saying

'this is a child of the State'. Health professionals assume that a number of women gave birth in secret and later committed infanticide. They also believe that a number of women who gave birth in the hospital allowed their babies to die after returning home.

Other women decided to accept their child. In some families, the mother's decision to keep the child has caused deep divisions in the family. In others, the child is being raised normally within the community." (Shattered Lives: Sexual violence during the Rwandan genocide and its aftermath, New York/Boston/London/Brussels, Human Rights Watch, September 1996.)

30. A number of measures have been taken by the State and non-governmental organizations to remedy the serious harm suffered by Rwandan women as a result of the hostilities. The Conference on genocide, impunity and responsibility, held in Kigali in November 1995, for example, recommended giving special priority to women in carrying out the rehabilitation programme. Two types of assistance - material and social - would be provided. Material assistance would involve providing the basic necessities (food, housing, clothing, etc.) and social assistance would involve setting up income-generating projects, housing rehabilitation, treatment of physical mutilation and psychological trauma, the creation of a specialized medical unit for the treatment of complicated cases and the revision of legislation to provide for better protection. Unfortunately, lack of resources prevented anything more than very limited implementation of all these programmes.

31. However, in view of the scale of their needs and the limited resources of the State, Rwandan women decided to look after themselves. Accordingly, they set up a number of women's associations with various aims. These included, for example: Pro-Femmes/Twese Hamwe; Association de solidarité des femmes rwandaises (ASOFERWA); Benimpuhwe; Association des volontaires de la paix (AVP); Association des veuves du génocide d'avril; Isangano; Group Kamaliza; Benishyaka. All these associations are involved in socio-economic development, the socio-cultural development of women, or pacification and reconciliation activities. Most of them formed a collective and, in November 1994, launched an "Action for Peace Campaign". Other action by women's associations involved assistance to children, another vulnerable category of genocide victims.

(b) Children

32. As already stated in the preceding report (E/CN.4/1996/68), children, including nursing infants, were not spared by the massacres. They were doubly victimized, either as perpetrators used by the belligerents as an instrument to commit crimes against humanity, killing as civilians or soldiers, or as innocent victims witnessing atrocities against their parents and/or suffering atrocities themselves.

33. The survivors face two problems: family reunification and social reintegration. To deal with them, the Rwandan Government has set up a national commission on children in difficult circumstances. The commission's task is apparently being facilitated by the ongoing traumatism rehabilitation programme. In its August 1996 report on children in difficult circumstances,

the Ministry of Labour and Social Affairs (MINITRASO) states that the programme had trained 8,000 persons to work with children, of whom more than 200,000 had been provided with assistance. This assistance is particularly important for the commission, which has the heavy responsibility of caring not only for unaccompanied children in centres, but also street children, child soldiers and child prisoners.

34. A foster family programme has been set up by MINITRASO, which has reduced the number of unaccompanied children in centres and orphanages appreciably. In December 1994, for example, there were 10,381 unaccompanied children; by December 1995, this number had fallen to 8,303 and by August 1996 to 6,620 (Enfants: avenir du Rwanda, report by the Ministry of Labour and Social Affairs, in cooperation with UNICEF, No. 6, 15 August 1996).

35. A special assistance programme for street children has been set up by the Ministries for Planning and Youth and community groups. This programme is part of a larger project entitled: "Support for the social integration of young people in difficult circumstances". The project covers a number of development activities, including: functional literacy, educational reintegration, vocational training, involvement of young people in micro-enterprises, recreational and cultural activities and socio-economic reintegration.

36. MINITRASO, in cooperation with UNICEF, has adopted a programme for demobilizing child soldiers and returning them to civilian life. Up to August 1996, more than 700 demobilized child soldiers who had been re-educated in the Butare demobilization school had been transferred to a number of secondary schools in Rwanda. This programme is due to be strengthened, mainly with the assistance of the World Bank, the International Organization for Migration, Handicap International and African Humanitarian Action. The aim is to demobilize 10,000 child soldiers.

37. At the end of October 1996, the number of child prisoners stood at 1,353. Some of them are in prison with their mothers, who are accused of participating in the genocide. Other children are themselves accused of having committed acts of genocide. This group includes children less than 14 years old, some of whom, now aged 9, were 7 years old at the time when the acts were committed. Most of those who were less than 14 years old when they participated in the genocide have been transferred to the Gitagata re-education and production centre in Bugesera (Rural Kigali prefecture). They numbered almost 200 on 7 December 1996. This number is expected to be increased to 440 shortly, when the construction of dormitories, refectories and classrooms has been completed. The aim of the Centre, which is currently staffed by 14 social workers, is the re-education and social reintegration of these children. Many of them now attend normal classes with children from neighbouring villages. The intention is to return these children to their respective families on completion of the re-education process. However, the Government and other non-governmental organizations involved in aid to child victims of the genocide lack the resources to carry out all their projects. The same is true for the Twas.

(c) The Twas

38. As stated in the preceding report (E/CN.4/1996/68), the Twas were not spared by the massacres. They were targeted by the RPA, the former FAR and the militias.

39. Their present situation shows little improvement. A vulnerable group with innumerable needs, the Twas have thus far not benefited from any special assistance programme. They are confronted with political and administrative obstacles in their attempts to benefit from "positive discrimination" measures. Despite these obstacles, they have organized themselves into the Community of Indigenous Peoples of Rwanda (CAURWA). From 13 April to 10 May 1996, this association, with the assistance of the Human Rights Field Operation in Rwanda, carried out an in-depth survey of the general situation of the Twas after the genocide and massacres of 1994. In its report, CAURWA drew the following conclusions:

> "As a result of the recent bloodshed, Batwa have been massacred, have disappeared and have taken refuge in neighbouring countries. Some of the survivors have been arbitrarily arrested and imprisoned, so that only the elderly and children remain active ... The discrimination practised against them from time immemorial has not yet been totally eliminated."

40. The report recommends that the Rwandan Government, inter alia, "should carefully and impartially study the cases of Batwa detainees" being prosecuted for participating in the genocide

B. Proceedings against persons suspected of genocide

41. The backlog in the courts with jurisdiction to institute proceedings against persons suspected of genocide and other crimes against humanity is increasing everyday, and this is a matter of concern to the international community in general and to the victims in particular. However, it must be recognized that some significant progress was was made during the period covered by this report. The International Tribunal has only just started to operate and the national courts have been making some efforts.

1. The first steps of the International Tribunal

42. Since the International Tribunal for Rwanda began to operate and adopted its rules of evidence and procedure, it has held several sessions, whose purpose has been twofold: to adopt additional rules and procedures and to begin trials.

(a) The adoption of additional rules and procedures

43. During the past year, the International Tribunal spent two of its sessions completing its regulations relating to evidence and procedures.

44. At its first session, held in January 1996, as indicated in the fifth report (E/CN.4/1996/68), it adopted directives on the exercise of the rights of the defence and legal assistance, as well as the rules on the detention of persons arrested.

45. At its third plenary session held at The Hague on 5 July 1996, the Tribunal completed its rules of procedure and evidence and adopted the directive on the assignment of defence counsel and the rules governing the detention of persons awaiting trial or appeal before the Tribunal or detained on its orders.

(b) The beginning of the trials

46. The International Tribunal began its first trials, the investigation phase of which takes place in several stages and involves a number of obstacles.

47. The procedural phases of the investigation of the records of the persons suspected of genocide and other crimes against humanity are relatively lengthy. According to the statements made by the Prosecutor, there are schematically nine stages: preparation of indictments by the Prosecutor; confirmation of indictments by the judges; issuing of arrest warrants; arrest and transfer to the Arusha prison; initial appearance; exchange of evidence; proceedings relating to preliminary issues and witness protection measures; proceedings on the merits; and separate hearing for sentencing if the accused is found guilty.

48. On 1 December 1996, the Tribunal had issued 14 indictments against 21 persons suspected of genocide; had issued 21 international arrest warrants; had had 13 accused arrested; and had obtained the transfer of 6 of them, who are now detained in Arusha, while the 7 others who have not yet been transferred are imprisoned in Cameroon (4), Côte d'Ivoire (1), the United States (1) and Switzerland (1), which is about to extradite the person arrested and detained there. The trials, which were set for the first quarter of 1996, finally began on 26 September 1996. As the accused persons' counsels obtained postponements, the cases will be heard only in the first quarter of 1997, on the following dates: 9 January (ICTR-96-4-I, J.-P. Akayezu, former burgomaster of Gitarama); 20 February (ICTR-95-1-I, Cl. Kayishema, former prefect of Kibuye; and O. Ruzindana, shopkeeper in Kibuye); 6 March (ICTR-96-3-I, G.A.N. Rutaganda, second vice-president of the Interahamwe); 8 April (ICTR-96-15-I, J. Kanyabashi, former burgomaster of Butare); 8 May (ICTR-96-10-I, G. Ntakirutimana, Kibuye village doctor; and O. Ruzindana); 20 May (ICTR-96-8-I, E. Ndajambaje, former burgomaster of Butare); and 12 August (ICTR-96-17-I, G. Ntakirutimana).

49. As may be seen, the Tribunal is not only at the beginning of the proceedings against the persons suspected of the massacres and other acts that constitute serious and large-scale human rights violations, but it is far below the figure of 400 suspects mentioned in the report by the Secretary-General of the United Nations to the Security Council, dated 4 June 1995 (S/1995/457), and in the Special Rapporteur's preceding report (E/CN.4/1996/68, para. 55). Only seven, or about 1/60 of the total number, are at its disposal at present. Of the seven persons who have already

appeared, the trials of only three have begun. The most important of the three accused is Mr. Clément Kayhishema, the former prefect of Kibuye. Twenty-five charges have been brought against him, including that of having ordered and organized:

> "1. The massacres committed in the Catholic Church and in Saint Jean home in the town of Kibuye, where thousands of men, women and children were killed and many other people were injured, on 17 April 1994;
>
> 2. The massacres committed at the sports ground in Kibuye, where thousands of men, women and children were killed and many others were injured, on 18 and 19 April 1994;
>
> 3. The massacres committed in the church in Mubuga, where thousands of men, women and children were killed and many other persons were beaten up, between 14 and 17 April 1994;
>
> 4. The massacres committed in the Bisesero region, in which thousands of men, women and children were killed and many other persons were injured, on 18 and 30 June 1994 ..." (Case No. ICTR-95-11: The Prosecutor of the Tribunal v. Clément Kayhishema)."

50. The obstacles that the International Tribunal has encountered are essentially of three different types: the lack of resources, cautious cooperation by States and the fact that the Tribunal is composed of so few members.

51. Despite the progress made, the International Tribunal still lacks basic resources, in particular human and material resources. This was emphasized by its President in his first report to the General Assembly and the Security Council on 24 September 1996. The Tribunal's leading official describes the situation in the following terms:

> "Although the Tribunal has made great progress during its first year of existence, it still faces many challenges. The Office of the Prosecutor needs greater human and material resources if it is to continue and speed up its work. Between now and the beginning of the first trials, scheduled for the autumn, a great deal of material and legal preparatory work remains to be done: for example, the construction work must be finished, transport organized and arrangements made for the accommodation of victims and witnesses. If the Tribunal is to cope with such problems, it must be given sufficient means and receive the support of the international community". (A/51/399-S/1996/778, para. 77.)

52. Secondly, there is still a lack of cooperation, which is none the less essential, between the International Tribunal and States, particularly those whose territory provides shelter for persons who are suspected of crimes and who are wanted by the Tribunal. Non-cooperation seems to be the rule and cooperation the exception in this regard. Cooperation is forthcoming from a few States which have instituted proceedings against the alleged criminals. It must, however, be recognized that the circle of such States is widening, as shown by the measures they have taken to amend their legislation to assume

jurisdiction over cases and, if appropriate, excercise universal jurisdiction and/or cooperate with the International Tribunal. There is, however, still a great deal to be done.

53. A third type of difficulty which is of a procedural nature, has arisen as a result of the increase in the number of cases. Under rule 15 (c) of the rules of procedure and evidence of the International Tribunal, the judges, who have confirmed the indictments, may serve in the same cases only when such cases come before the Trial Chambers. As this incompatibility may affect several judges, particularly in combined cases, it is impossible to provide the Chamber in charge of the prosecution with the composition required by the Statute and the rules of procedure, i.e. three judges. The situation should be remedied by amending the rules of procedure in accordance with article 14 of the Tribunal's Statute.

II. Efforts by national courts

54. Significant progress has been made at the national level. In order to appreciate it, it is essential to distinguish between proceedings instituted in foreign courts and in Rwandan courts.

(a) Foreign courts

55. In his preceding report (E/CN.4/1996/68), the Special Rapporteur referred to the judicial proceedings instituted in some countries against the persons suspected of genocide. Reference will be made mainly to Belgium, Canada and Switzerland, not to mention the arrests made in Kenya, Côte d'Ivoire, the United States of America and, above all, Zambia. For example, the investigation proceedings against the four persons arrested and detained in Belgium have already been completed and the judicial authorities have already transferred two of the persons being prosecuted to the International Tribunal, which has, moreover, requested the extradition of the person arrested and detained in Switzerland.

56. Attention is drawn to two new developments, which are not equally significant and relate to national proceedings.

57. The first is the arrest, in Cameroon in March 1996, of 12 members of the former Rwandan regime who are accused of having instigated the genocide. They include Colonel Théoneste Bagosora, a former high-ranking FAR officer, and Ferdinand Nahimana, reputedly one of the "ideologists" of the genocide. Belgium had requested the extradition of the former in connection with the investigation into the murder of 10 Belgian Blue Helmets, but abandoned the proceedings following a decision by the Belgian Supreme Court. Rwanda also applied unsuccessfully to the Cameroonian authorities for the extradition of the persons arrested. In June 1996, the International Tribunal itself officially requested Cameroon to authorize the transfer of four persons arrested and detained in Yaoundé Central Prison: Théoneste Bagosora, Ferdinand Nahimana, Anatole Nsengiyumva and André Tagerura. The Government of Cameroon agreed to the request. However, the decision to transfer them took some time and was implemented only in January 1996.

58. The second development is, as has already been mentioned, the decision of a number of States to amend their legislation in order to cooperate with the International Tribunal and, as appropriate, assume jurisdiction over cases, thereby exercising universal jurisdiction. This is the case of Australia, Denmark, New Zealand and Switzerland, which have adopted legislation relating to cooperation with the International Tribunal. It is also the case of Belgium, whose Parliament adopted an act on 22 March 1996 on recognition of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda and on cooperation with those tribunals (Damien Vandermeersch, "La loi du 22 mars 1996 relative à la reconnaissance du Tribunal international pour l'ex-Yougoslavie et du Tribunal international pour le Rwanda et à la coopération avec ces tribunaux", Revue de droit pénal et de criminologie, No. 7-8, 1996, pp. 855-888). The same is true of France, which adopted Act No. 96-432 on 22 May 1996; it brings French legislation into line with the provisions of Security Council resolution 955, which established the International Tribunal for Rwanda, and it was supplemented by a circular of 22 July 1996. Rwanda has taken steps along the same lines.

(b) The Rwandan courts

59. Unlike the International Tribunal, the Rwandan courts have barely begun trials of the persons suspected of genocide. They are still at the preparatory stage, which has undergone significant changes as a result of two major developments: the reconstitution of the judicial system and the adoption of special legislation relating to proceedings:

(i) The reconstitution of the judicial system

60. The reconstitution of the judicial system has compelled the Rwandan authorities to deal with those obstacles which, as already mentioned, prevent or delay the rehabilitation of the Rwandan judicial system. The progress made has led to the gradual removal of these three-fold obstacles: institutional, human and material.

(a) At the institutional level

61. The bodies that are essential for the organization and operation of the judicial system have been reconstituted.

62. The higher courts have not only been established, but have begun functioning. The Supreme Council of the Judiciary (CSM), in particular, began functioning on 15 April 1996. It gradually appointed judges and assigned them to the various courts, from the Supreme Court of Justice down to the district courts. At its May 1996 session, for example, the Council appointed 89 judges; at its session held from 14 to 16 September, it appointed 283 judges, 2 of whom were assigned to the Court of Appeal in Kigali and 1 to the Court of Appeal in Nyabinsindu; 116 judges were assigned to the various courts of first instance and 177 to the district courts.

63. The courts were functioning as follows at the end of September 1996: (a) of 147 district courts, only 20 or so were not functioning, as opposed

to 100 in January 1996; (b) of 12 courts of first instance, 11 were operational, or 5 more than in January 1996; and (c) of the 4 courts of appeal, 3 were functioning, or 3 more than in January 1996.

(b) Human resources

64. Considerable progress has also been achieved with regard to judicial personnel, thanks to the continual training provided. The Ministry of Justice has continued to provide accelerated training for the staff of the Public Prosecutor's Office, courts and registrar's offices.

65. Since this training began, 310 lay magistrates have been trained, 6 of whom are military personnel now assigned to the military courts. These judges were trained by the Canadian Voluntary Service Overseas (110), the Belgian Voluntary Service Overseas (110) and the "Reseau des Citoyens" (100).

66. Concerning the representatives of the law, 218 judicial police inspectors were trained in mid-March 1996 and 76 of them were selected to follow a training programme for prosecutors, while others are continuing their legal studies at the University of Butare. The Canadian Voluntary Service Overseas is training 150 more judicial police inspectors, with assistance from UNICEF. In addition, 900 gendarmes have followed a four-month training programme at the National Gendarmerie School at Ruhengeri and, in mid-March 1996, 750 communal police officers completed a four-month proficiency course at the Gishari Communal Police training centre. The following played a role in carrying out all these training programmes: several United Nations agencies (UNDP, Human Rights Field Operation in Rwanda, UNHCR and UNICEF), the European Union, several countries (Germany, Belgium, Canada, United States of America, Netherlands, Uganda, Sweden and Switzerland and some non-governmental organizations (Réseau des Citoyens and Jurists without Borders).

67. The progress achieved takes the form of an increase in personnel. From December 1995 to December 1996: (a) the number of judges rose from 387 to 448, or 61 more; (b) the number of prosecutors rose from 20 to 120, or 100 more; and (c) The number of registrars rose from 110 to 288, or 188 more.

68. There has, however, been a considerable drop in the number of judicial police inspectors, from 312 to 223. The reason for this 89-person decrease is that some judicial police inspectors have been assigned as officials of the Public Prosecutor's Office and others have been sent for training at the University of Butare Law Faculty.

69. The improvement in human resources must, however, be put into perspective and considered carefully, for two very simple reasons: (a) quantitatively, these figures are far short of needs, which are estimated, according to the revised plan of the Ministry of Justice, at 694 judges for "start-up" purposes alone, i.e. 151 too few; to have a general idea, one need only compare this figure with that of the 800 judges practising before the events of April 1994; and it must especially be borne in mind that these judges are being called on to try an astonishing number of prisoners (there were over 90,000 persons in the detention centres at 31 December 1996); (b) qualitatively, it is unfortunate that practically none of these judges are

jurists; of the 89 judges appointed in May 1996, only 20 or so, or less than one fourth, had received adequate legal training; over 75 per cent of the judges were trained on the job and, what is more, to hear cases of genocide, which is a serious and complex offence that carries the death penalty. This is illustrated by the first judgements handed down, especially by the court in Kibungo, which has already handed down two death sentences in proceedings that violated international standards by depriving the defendants of their right to be assisted by counsel.

70. As indicated in the preceding report (E/CN.4/1996/68, para. 51), the foreign judicial personnel aid project was not accepted by the Government of Rwanda for reasons relating to national sovereignty. The funds made available to UNDP under the assistance project for the rehabilitation of the legal system were thus used to pay bonuses ranging from $58 to $211 to 1,100 members of the Rwandan judiciary. Only six foreign jurists are currently working in the Ministry of Justice foreign personnel assistance programme. They were assigned to the courts of first instance in Butare, Cyangugu, Gikongoro, Gitarama, Kibungo and Kibuye, with the task of advising the presidents of the respective courts, the members of their prosecution departments and the judicial police inspectors assigned to them. It is now thought that their number should be increased to 10, rather than 50 as originally planned. The central administration of the Ministry of Justice, for its part, receives technical assistance from foreign consultants in the preparation, implementation and follow-up of projects, the coordination of international assistance and the translation of legislative texts. Among the countries represented are Germany, Belgium, Canada and the Netherlands and the donor agencies include UNDP, the European Union and the United Nations Centre for Human Rights.

(c) Material aspects

71. With assistance from the international community, the Government of Rwanda has proceeded to reconstruct buildings housing various courts and tribunals, provide the staff with means of transport (vehicles, mini-vans and motorcycles), purchase basic supplies (typewriters, photocopy machines, printers, office furniture, loose-leaf files, folders, cameras, etc.), publish copies of Rwandan codes and laws and set up judicial archives. In addition to efforts to rehabilitate the judicial system, Rwanda has enacted a special law relating to proceedings.

(ii) Act organizing proceedings against persons suspected of genocide

72. In his preceding report (E/CN.4/1996/68), the Special Rapporteur discussed two competing proposals made by the participants in the Conference on Genocide and Impunity, held at Kigali from 1 to 5 November 1995. The first proposal concerned the establishment of a special court, independent of the existing judicial system, to try the persons suspected of genocide, and the second the introduction within the existing courts of specialized chambers to try such cases. The second formula was the one retained by Act No. 8/96, adopted on 30 August 1996 by the Rwandan Parliament and declared constitutional by the Constitutional Court. Article 1 of the new Act stipulates, "there shall be established, within the courts of first instance and military courts, specialized chambers with exclusive competence to try the

offences referred to in article 1". This provision establishes the Rwandan courts' three areas of competence: Competence ratione materiae, ratione temporis and ratione personae.

(a) Competence ratione materiae

73. Ratione materiae, the specialized chambers are competent to try: (a) crimes of genocide or crimes against humanity as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and its Additional Protocols, and the Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 26 November 1968, all three of which have been ratified by Rwanda; and (b) offences covered in the Penal Code, which the Public Prosecutor's Office alleges, or the defendant admits, were committed in connection with the events surrounding the genocide and crimes against humanity.

(b) Competence ratione temporis

74. Ratione temporis, the Rwandan courts are competent to try punishable acts which, pursuant to Act No. 8/96, were committed between 1 October 1990 and 31 December 1994. While maintaining the same dies ad quem as the one established in article 1 of Security Council resolution 955 (1994) of 8 November 1994, adopting the Statute of the International Criminal Tribunal for Rwanda, namely, the end of December 1994, this Act differs as to its dies a quo, the day from which the reprehensible acts fall within its scope. The dies a quo is set, not on 1 January 1994, but on 1 October 1990, the date of the outbreak of civil war in Rwanda. It should be noted that the Government of Rwanda had unsuccessfully attempted to persuade the Security Council to adopt that solution. The choice of the 1 October date, although preferred by the authorities because of its connection with the launching of the civil war by the RPF, has the advantage of better delimiting the acts in preparation of the genocide and other crimes against humanity committed in Rwanda from April 1994 onwards.

(c) Competence ratione personae

75. Ratione personae, the law covers, in principle, all alleged perpetrators of serious violations of human rights and international humanitarian law. Article 2 of the Act adapts this general principle to the punishment system by distinguishing four categories of perpetrators of reprehensible acts. In descending order, the first includes (but does not define): (a) the planners, organizers, instigators, supervisors and ringleaders of the crime of genocide and crimes against humanity; (b) persons who have committed, or encouraged others to commit, the above-mentioned crimes, in their capacity as national, prefectoral, communal, penitentiary, military, paramilitary (militia) or religious authorities; (c) persons who have systematically committed heinous acts of homicide; and (d) persons responsible for sexual abuse. The second category includes persons who have perpetrated or been accomplices to intentional homicides or serious assaults having caused the death of their victims. The third category includes persons who have committed criminal acts

or acts of criminal participation as part of other serious attacks against human beings. Lastly, the fourth category includes persons who have committed offences against property.

76. This classification has been used to establish a graduated scale of penalties, both principal penalties and accessory penalties. Persons in the first category are liable to the death penalty (art. 14). They cannot be granted the reduced penalties provided for under article 6, in the event of convictions handed down on the basis of a confession and guilty plea made before (art. 15) or after (art. 16) the proceedings. Under articles 6 and 14 together, persons in the second category are liable to life imprisonment, those in the third, to the prison terms established by the Penal Code and those in the fourth have only to pay civil damages in an out-of-court settlement or following civil or criminal judicial proceedings. However, persons in the second category, if they have confessed and pleaded guilty before the trial, are liable to 7 to 11 years' imprisonment and those in the third category, to a third of the sentence that would have normally been handed down by the court and, if they have confessed and pleaded guilty before the trial, to prison terms of 12 to 15 years and half of the penalty which the court should normally order, respectively. Where accessory penalties are concerned, persons in the first category are liable to perpetual and total civic dishonour, (obviously in cases where the death penalty is commuted to another penalty) and those in the second category to perpetual civic dishonour, as provided for in article 66, paragraphs 2, 3 and 5, of the Rwandan Penal Code, which stipulates, "Civic dishonour consists of the following: [...] 2. Removal of the right to vote, be elected or run for office, all civic and political rights in general, and the right to wear decorations; 3. Inability to testify as an expert witness or to testify in a court of law other than for the purpose of providing basic information; [...] 5. Removal of the right to bear firearms, the right to serve in the armed forces, to be a member of the police, to run a school, teach or be employed in any educational establishment as a teacher, instructor or supervisor".

77. With regard to compensation for damages, the Act provides that "The criminal responsibility of persons in category 1 as defined in article 2 entails joint and mutual civil responsibility for all damages caused in the country as a result of their acts of criminal participation, whatever the place where the offences were committed. Persons in categories 2, 3 and 4 are civilly liable for the criminal acts they have committed" (art. 30). Lastly, it should be mentioned that article 32 establishes a Compensation Fund for the genocide victims who have not yet been identified.

78. Beginning in October 1996, the Act has been the subject of an energetic explanatory and awareness-raising campaign directed at all sectors of the Rwandan population: the administration and the public, urban and rural sectors, judicial and prison personnel and detainees. It had even been planned to conduct the campaign in the refugee camps. On 25 November 1996, the Attorney-General of the Republic issued a provisional list of 1,946 persons suspected of genocide, all in the first category. The special courts, such as the one in Kibungo, have begun operating, like the ordinary courts, which had already been functioning for several months and trying ordinary civil and criminal cases, including current violations of human rights.

II. CURRENT VIOLATIONS OF HUMAN RIGHTS

79. Between the publication of the last report (E/CN.4/1996/68) and the fifty-second session of the Commission on Human Rights in March-April 1996, there was a slight improvement in the human rights situation, which was unfortunately offset by a fresh outbreak of violations in June, July and August, owing to the prevailing insecurity in the country during that period. The situation varies, however, according to whether the right to own property, the right to personal security, the right to freedom of expression, the right to physical integrity or the right to life is involved.

A. Violations of property rights

80. Violations of property rights, which are likely to worsen, have led the authorities to take a number of measures.

1. Risk that the situation will worsen

81. As indicated in the preceding reports, violations of property rights take the form of illegal occupation of property and lead to arbitrary arrests and detentions as a result of malicious accusations and to land disputes ending in murder.

82. It is true that there was a lull in such violations during the period covered by this report. Rwandan authorities currently estimate that 10 per cent of vacant property is the subject of disputes between old and new returnees. This downward trend was confirmed by the human rights observers, based on the low number of cases submitted to them or brought to their attention.

83. The problem might well worsen, however, and become complicated with the large-scale return of refugees. There is a severe lack of housing and arable land in the country and of the financial means to meet these needs. This situation is obviously due to the destruction caused by the hostilities of 1994, or even 1990, and consequently does not require any particular comments. Suffice it to say, by way of example, that two types of regions may have to bear a disproportionate burden of the large-scale return of refugees.

84. The first type consists of regions already having problems with land disputes. These are the major urban centres, such as Kigali, Gisenyi and Butare, but also a few rural areas, particularly Kibungo prefecture. According to the statistical data for housing reconstruction established by UNHCR in April 1996, there were 32,958 occupied houses in this prefecture and 45,872 hectares of occupied fields.

85. The second type of situation concerns regions which are not now affected by the problem of the illegal occupation of property, for lack of housing but are being called on to build or restore dwellings. In this case the problem is not solved, but simply displaced. A typical illustration is Byumba prefecture, where the houses were destroyed at the beginning of the hostilities in 1990. The commune of Cyumba alone, which already had 11,913 inhabitants for a surface area of nearly 73 km^2, received an influx of nearly 20,000 returnees in November-December 1996. The resulting overcrowding

contains the seeds of land disputes. It is easy to see why the authorities are anxious to take immediate measures to deal with the most urgent matters.

2. Measures by the government authorities

86. The measures taken or planned by the government authorities to put an end to the illegal occupation of property come down mainly to evicting illegal occupants and building dwellings for old refugees.

(a) Evicting the illegal occupants of property

87. To combat the illegal occupation of property more effectively, the Government has decided to entrust the management of vacant property to the burgomasters, who can rent it to the old returnees. When the latter occupy property, they are placed under an obligation to leave within 15 days from the date of the owners' return. But this is not an absolute rule. The parties concerned may derogate from it, either by reaching agreement on a longer time period or by drawing up a lease. Experience has shown that amicable solutions between parties are more effective than coercion by the authorities. Coercion would have only entailed drawbacks, of which we will mention only two:

(a) The first is the ineffectiveness of the use of force against "recalcitrants" who were either APR officials or supported by them, as the failure of the land dispute committee amply attests; (b) the second drawback is that evicting the occupants, on the assumption that this will break down their resistance, does not solve the problem, but merely displaces it. The State itself is under the obligation to provide housing to the people evicted, whom it cannot leave homeless in the street. It is for this reason that the authorities give priority to construction of dwellings.

(b) Construction of dwellings for old caseload returnees

88. The action undertaken by the Rwandan authorities is in fact quite complex. It aims not only at housing all returnees without exception, but also at providing them with arable land. It covers both the old and the new refugees, those of the diaspora from the 1994 genocide. It involves the restoration of damaged houses and property, the construction of dwellings and even making construction sites available. All State and local authorities are involved. In some cases, they act alone. In others, they are assisted by international governmental or non-governmental organizations. The Special Rapporteur visited two pilot projects, one in an urban area in Kicukiro (Kigali City) and another in a rural area, in Kibungo prefecture.

(i) Experience in the urban commune of kicukiro

89. The population of this commune was estimated at 85,000 inhabitants before the November 1996 repatriations. It has since increased to 90,000. This population lives in a territory of 34 k^2, for a density of 3,000 inhabitants per square kilometre. The burgomaster of Kicukiro reports that the problem of the illegal occupation of property has become a serious one in certain urbanized sectors of the commune, such as Gikondo and Kicukiro. The situation is different in outlying sectors such as Kagarama. It is true that African solidarity, strengthened by the awareness-raising campaign, initially

solved the problem of accommodation for many returnees. But this is only a temporary solution for many of them, who are waiting to recover what is rightfully theirs. Thus, the authorities in Kicukiro are planning to build 3,000 houses for the old refugees, provided that they move out of the dwellings they are now occupying. Other dwellings are also being planned for vulnerable people and for genocide victims. Six thousand dwellings are needed, which will require the purchase of nearly 300,000 sheets of corrugated iron, which is far beyond the capacity of the local, and even central, authorities. Despite the difficulties, the central authorities have already opened a site at Kaciru, where the construction of 2,500 dwellings is planned. The Ministry of Public Works is providing the returnees with building plots, while the commune is helping to produce the bricks which the beneficiaries are responsible for making.

(ii) Experience in Kibungo prefecture

90. Kibungo prefecture is more severely affected by the illegal occupation of property, with 27,000 cases. Land and real estate disputes are rare as yet because there was a very small number of refugees (4,000) until mid-December. Conflicts are likely to break out and to increase with the expected large-scale return of refugees from the United Republic of Tanzania. For this reason, efforts are focusing on the construction of new dwellings. Thirty-six sites have been chosen for this purpose. They have been attributed to non-governmental organizations which have been put in charge of building "villages" with assistance from the Office of the United Nations High Commissioner for Refugees (UNHCR). The Lutheran World Federation has been assigned the task of resettling the returnees in certain communes in Kibungo and Gitarama prefectures.

91. The Federation's building programme began on 16 September 1996; its strategy consists of training groups of 20 people at the rate of one representative per family. These people will be divided into sub-groups of five and put in charge of building six houses, five for themselves and one for a vulnerable person designated by them. Each person receives a 600 m^2 plot and, not far from his "village", 2 hectares for crop-raising. Thus, 500 houses are expected to be built on the Bukara ranch under this programme, at a rate of 125 per sector. The 410 people building the houses are not paid, but they receive food from the Lutheran World Federation and the World Food Programme. UNHCR is financing the project and supplying material such as lumber and corrugated iron and is meeting the costs of the carpenters and other technicians, as well as those of the other infrastructures (schools, markets, dispensaries, etc.). These dwellings are intended solely for the old refugees, to encourage them to leave the "new" refugees' homes which they are occupying. This solution is no doubt a useful one for settling the problem of illegal occupation of property, but it does involve the risk of establishing "Tutsilands" inside the areas in question.

B. Violations of freedom of expression

92. Violations of freedom of expression take the form of censure, intimidation and even violations of physical integrity (beatings with clubs, aggravated assault, etc.), kidnappings and murders of individuals who belong to professional categories with the common feature of being able to express

their opinions orally or in writing and who take the risk of practising their profession with complete independence. These violations are aimed in particular at journalists, the religious community, judges and human rights workers.

1. Journalists

93. Because they express themselves freely and provide objective information that departs from the Government's guidelines, several journalists have been called enemies of the people and subjected to intimidation and threats. Some have been arrested, others, fearing for their lives, have gone into exile and still others have been abducted or reported disappeared. The Special Rapporteur's last report (E/CN.4/1996/68) mentioned the attack on journalist Edouard Mutsinzi and the disappearance of Mr. Manasse Mugabe of UNAMIR radio.

94. Reference should also be made to the arrest on 29 March 1996 of Mr. Joseph Ruyenzi of Radio Rwanda and the ill-treatment to which he was subjected. He was arrested on charges of raping and mutilating a woman. Consistent and reliable testimony gathered by the observers indicates that the charges were merely a pretext for the arrest. The journalist, who had been working for the national radio station for one and a half years, was known for providing information on violations of human rights in Rwanda.

2. Judges

95. The freedom of expression of some judges has been violated and such violations particularly impede their ability to perform their functions independently.

96. Some judges and prosecutors have been suspended, apparently for failing to obey orders by the authorities or for taking decisions that were not to the authorities' liking. One such case was the suspension by the Council of Ministers, on 27 February 1996, of the President of the Court of First Instance in Kigali, Mr. Jean-Claudien Gatera. Mr. Gatera was demoted to ordinary judge by the Supreme Council of the Judiciary on 28 May. A similar case was the suspension of Mr. Fidèle Makombe, the Kibuye prosecutor. The measure was taken as a result of a disagreement between Mr. Makombe and the civil and military authorities of the prefecture about the distribution of their respective areas of competence. The fact that Radio France International interviewed Mr. Makombe and then covered the event was probably an aggravating circumstance.

97. Other judges have been arrested on charges that they participated in genocide, whereas they had obviously not done anything of the kind and the real grievance against them was their decision to release detainees. An example is the arrest on 2 May 1995 of the Butare prosecutor, Mr. Célestin Kayibanda.

98. Still other judges have been murdered. The most recent case is that of the assistant prosecutor in Rushashi, who was killed on 7 July together with the burgomaster of the commune of Rushashi, the director of a primary school

and several other persons, including women and children. The authorities blamed the events on infiltrators, but testimony gathered by human rights observers tends to attribute responsibility to APR members.

3. The religious community

99. As indicated earlier (E/CN.4/1996/68), relations between the new Rwandan authorities and certain religious denominations are not looking rosy. This is particularly true of the Catholic Church, in view of the privileged relations of some members of its hierarchy with dignitaries of the former Government.

100. The current clash between State and Church relates to the fact that several buildings where massacres occurred are being turned into genocide memorial museums. Fifty churches have thus been chosen by the State to be commemorative monuments and regular services have been prohibited. Such a decision is obviously contrary to the religious aspect of freedom of expression, i.e. freedom of worship.

101. This conflict appears to have been settled successfully, thanks to efforts by the Joint Catholic Church-State Commission, whose members were able to reach an agreement. Under the agreement, the churches scheduled to become commemorative monuments in the first category "will keep their cultural function for the congregation's sake and in order to teach our Christians the value of memory" (letter from the Episcopal Conference of Rwanda to the Rwandan Government).

4. Human rights workers

102. Human rights activists continue to be harassed by certain authorities, the official media and APR soldiers. They are accused of being in league with the militia members, just as the former Government accused them of being inside accomplices of the RPF. Referring to them, one journalist did not hesitate to say: "Those who were not in favour of the Government's action were enemies of the nation".

103. Some human rights activists belonging to the Collective of Human Rights Leagues and Associations (CLADHO) have been threatened, mainly by telephone, in connection with their activities for the promotion and protection of human rights. Others have been arrested for no reason, as was the case of Mr. Jean-Baptiste Barambirwa, Present of CLADHO. Mr. Barambirwa was arrested in December 1995, after declaring the closure of "Justice week in Rwanda" at the Hotel Diplomate in Kigali. More recently, it was the turn of Mr. Jean-Pierre Bichamumpaka, treasurer of the independent newspaper Kinyamateka, edited by a human rights activist, to be arrested on 16 July 1996. He was first taken to the gendarmerie in Kacyiru and then moved to Remera police headquarters, where he is allegedly still being held. He is charged with participating in the massacres of the Bagogwe in 1992. But there is every indication that he is being harassed because of his work for this newspaper, which is known for its efforts on behalf of the protection of human rights.

C. Violations of the right to personal security

104. Despite a period of relative calm, violations of the right to personal security continue to be disturbing, given the Government's determination to enact emergency measures at all costs. After the failure of the attempt to suspend the right to personal security through the Act of 9 June 1995, which was censured by the Constitutional Council on 26 July 1995, on 8 September 1996 the Rwandan Parliament adopted Act No. 9/96, containing provisional amendments to the Code of Criminal Procedure. The Act suspends the fundamental guarantees granted to convicted prisoners, thereby confirming the practice of arbitrary arrests and detentions.

1. Suspension of fundamental guarantees through Act No. 9/96 of 8 September 1996

105. Act No. 9/96 of 8 September 1996, which was declared constitutional by the Constitutional Court, contains emergency measures that are not consistent with international standards.

(a) Emergency measures

106. The emergency measures enacted consist of the retroactive application of the law, through the extension of detention periods and, in some cases, the elimination of the right of appeal.

(i) Retroactivity of the Act

107. The Act's exploratory statement *in fine* reads as follows:

> "Pursuant to these principles, the Act establishes the indispensable provisional measures to be taken with regard to arrest, pre-trial detention and maintenance of pre-trial detention. These measures shall enter into force on 6 April 1994."

108. This provision derogates from the principle of the non-retroactivity of the law in that it makes the new Act effective as of 6 April 1994, i.e. the beginning of the massacres. It thus tends to legalize the practice of arbitrary arrests and detentions. In the operative part of the Act, retroactivity applies to detention periods.

(ii) Extension of detention periods and absence of the right of appeal

109. The Code of Criminal Procedure in application before the amendments came into force provided that a report was to be issued whenever a person was arrested. The report was valid for 48 hours (art. 4). Under articles 37 and 38, it was for the official of the Public Prosecutor's Office to issue an arrest warrant on arrest or on transfer of the file by the judicial police inspector. Within five days after the Public Prosecutor's Office had drawn up and issued the arrest warrant, the judge had to issue a pre-trail detention or release order (art. 38). In the event of detention, the order was valid for a period of 30 days (art. 41). A person arrested after having been released had the right to appeal the decision (art. 44). He or she also had the right to

appeal a detention order (art. 46) and to appeal the pre-trial detention decision handed down by the court in a formal hearing (arts. 55 and 56).

110. Articles 1, 2 and 3 of the new Act establish three categories of persons arrested or detained:

> "1. The first consists of persons who are already in prison when the new Act is published and brought into operation. Considering that the judicial system is gradually being reorganized, but that much remains to be done, sufficient time should be allowed for drawing up an arrest report and issuing an arrest warrant and a pre-trial detention order for all detainees. A period of over 18 months, to expire at the end of next year, is a reasonable deadline. The duration of the validity of the pre-trial detention order is raised from 30 days to 6 months. The right of appeal is eliminated (art. 6).
>
> 2. The second category includes persons who will be arrested after the publication of the law and before the end of next year. Without going so far as to extend detention periods as in paragraph 1 above, the situation makes it necessary to lengthen them as follows:
>
> The arrest report must be drawn up within one month following the arrest (as opposed to 48 hours);
>
> The official of the Public Prosecutor's Office may take up to four months following the arrest to issue an arrest warrant;
>
> The pre-trial detention order must be issued within three months following the arrest order (as opposed to five days);
>
> The duration of the validity of the order is increased from 30 days to 6 months.
>
> As in the preceding category, the possibility of appeal is eliminated.
>
> 3. Lastly, as from 1 January 1998, it will be possible to shorten the detention periods set in paragraph 2, but without reverting to those provided for in the Code of Criminal Procedure. A new period has been set, to end with the transition period on 16 July 1999, during which the detention periods will be as follows:
>
> The judicial police inspector must draw up the arrest report within five days;
>
> The arrest report must be issued within two months following the arrest;
>
> The pre-trial detention order must be handed down within two months after the arrest warrant is issued;
>
> The pre-trial detention order will be valid for three months.
>
> The Act also contains certain procedural provisions:

The judge ruling on pre-trial detention is not necessarily the President of the Court, but a judge designated by him;

The period within which the judge must hand down his decision is raised from 24 hours to 15 days;

The right of appeal is eliminated."

(b) Failure to meet international standards

111. The Rwandan Government invokes article 4 of the International Covenant on Civil and Political Rights to establish a legal basis for these emergency measures. The reference to the Covenant is quite explicit. The explanatory statement to the Act reads as follows: "Considering that, since 6 April 1994, the Rwandese Republic has been experiencing a public emergency which threatens the life of the nation, within the meaning of article 4, paragraph 1, of the International Covenant on Civil and Political Rights ...". This situation, it is explained, is primarily one of overcrowding in prisons, the powerlessness of the judicial system and the perpetuation of the impunity caused by the absence or slowness of criminal proceedings against the persons suspected of genocide.

112. The interpretation of article 4 of the Covenant is not accurate because a partial approach has been taken. Recourse to the derogation clause in article 4 is authorized only "In time of public emergency which threatens the life of the nation" and "the existence of which is officially proclaimed". In addition, the measures in question must be taken only "to the extent strictly required by the exigencies of the situation" and must be consistent with other international obligations. The above-mentioned conditions do not appear to have been met in the case under consideration. It is of course true that the powerlessness of the judicial system to cope with overcrowding in prisons is a public emergency which required the Rwandan Government to enact emergency legislation to remedy the situation. That solution might have been necessary until early 1995, but, at present, it is not materially impossible to respect certain forms and procedures of criminal legislation to the point of endangering the fundamental rights of individuals, particularly detainees. The derogation clause cannot, in these conditions be applied. Moreover, a fairly restrictive interpretation is found in international case law and doctrine, which cite as examples of danger a situation of war or internal disturbance officially proclaimed by a state of siege or state of emergency. They require that the measures taken should be temporary, that the other States parties to the Convention should be informed and that the measures should not impair fundamental human rights (see Judgement of the European Court of Human Rights in the Greek Case of 1967). One author, writing on article 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, whose wording is similar to that of article 4 of the Covenant, says the following:

"The right of derogation authorizes only certain clauses of the Convention to be suspended and leaves intact the fundamental principles of rule of law: the suspension of certain liberties does not mean that the rule of law is put on stand-by. The spirit, if not the letter, of article 15 excludes the total suspension of certain rights, such as

individual freedom or the right to a fair trial, whatever the pressure of circumstances. The importance of the obligation to respect the other obligations under international law cannot be underestimated in this regard" (R. Ergec, Les droits de l'homme à l'épreuve des circonstances exceptionnelles, study on article 15 of the European Convention on Human Rights, Brussels, Bruylant, 1987, pp. 391 and 393).

113. The new Act is thus prejudicial to several fundamental rights granted to persons who have been arrested or detained. First of all, it violates the principle of the non-retroactivity of criminal law (and criminal procedure), according to which no one may be arrested, detained, prosecuted or convicted except in the cases and according to the forms specified by a law which entered into force before the commission of the offence. Article 15 paragraph 1, of the Covenant establishes this principle as follows: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed".

114. The new Act also introduces discrimination in the treatment of persons being prosecuted for the same acts. It thus violates the principle of equality before the courts, embodied in and guaranteed by article 14 of the Covenant, and its corollary, the principle of non-discrimination.

115. Lastly, the Act eliminates a fundamental guarantee of judicial procedure, namely, the right of appeal, whereas article 2, paragraph 3 (b), of the Covenant stipulates that "Each State party to the present Covenant undertakes: [...] To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy".

116. The extension of the time limits for the various procedures and, consequently, the lengthening of detention periods are also contrary to the right to a fair trial, which entails, inter alia, the right to be tried without undue delay. Article 9, paragraph 3, of the Covenant stipulates: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release". Paragraph 4 states: "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful".

117. The reasons underlying this reform (prison overcrowding), material impossibility of dealing with cases according to the normal procedure, etc.) cannot justify the questioning of principles and rights so fundamental as those that have just been analysed. They also tend to encourage arbitrary arrests and detentions.

2. Continuing arbitrary arrests and detentions

118. As indicated earlier, there has been a period of relative calm in violations of the right to personal security, which take the form of arbitrary arrests and detentions. Nevertheless, two periods of political tension have caused a fresh upsurge of arrests. The first was the April-May 1996 census period, which ended in a veritable witchhunt for the perpetrators of the genocide, and the second, the searches to find and arrest infiltrators in July and August.

119. This situation has worsened the deplorable conditions of detention, which are characterized by prison overcrowding and inhuman treatment.

(a) Overcrowding in prisons

120. In the preceding report (E/CN.4/1996/68), the Special Rapporteur drew attention to a relative improvement in conditions of detention in some prisons as a result of the construction of the Nsinda centre, the expansion of the Gitarama prison, the renovation of other centres and the transfer of detainees from overcrowded centres to less crowded ones. Efforts were also made to separate juveniles from adults.

121. Despite the authorities' efforts to relieve congestion, Rwandan detention centres are still overcrowded and conditions in some centres continue to worsen. The prison population has kept increasing. On 31 May 1996, it was estimated at 51,006 detainees in the 14 main prisons. This figure rose on 31 October 1996 to 56,876, to which must be added persons detained in communal jails and gendarmerie stations, thus bringing the total prison population of Rwanda to 86,819 detainees on 30 November 1996. The increases that have been recorded may be explained by the above-mentioned political tensions and the large-scale return of refugees. The increase is even greater from one year to the next. From 31 December 1995 to 31 December 1996, the prison population rose from 49,185 detainees to over 90,000 i.e. nearly twice as many.

122. The number of detainees in 1996 was, however, not as great as in 1995. It went from 49,185, with an average of 4,098 per month, to 90,000, or nearly 40,000 more, with an average of nearly 3,400 per month. The relative slowdown in arrests is the result of overcrowding in existing centres, which made the authorities realize that other detainees could not be crowded in and led them to recommend the suspension of large-scale arrests.

123. Rwandan prisons and detention centres are all more or less equally overcrowded. The difference thus lies not in the type, but in the degree, of overcrowding. Prisons are not differentiated according to whether they are more or less populated, but, rather, according to whether or not they are more overcrowded or, more accurately, according to whether their numbers have remained stable or increased sharply. In the first case of relative stability, reference may be made, by way of example, to the Ruhengeri prison, with 2,319 detainees on 31 November 1996, as against 1,550 on 31 November 1995, or 30 per cent more, and the Kigali City prison, with 14,478 detainees on 30 November 1996, as against 10,683 on 31 December 1995, or 30 per cent more. In the second case, which includes already overcrowded

centres that have received new detainees, the Butare prison, with a capacity of 1,200 detainees, housed 9,346 on 30 November 1995 and 17,537 on 30 November 1996, i.e. more than twice as many; the Gikongoro prison, which had 1,439 detainees on 30 December 1995 and 3,356 on 30 November 1996, or twice as many; and the Kibuye prison, where 2,431 persons were detained on 30 November 1995 and 7,022 were being held on 30 November 1996, i.e. three times as many. Such conditions of detention are in themselves inhuman treatment.

(b) Inhuman treatment

124. Prison overcrowding is the cause of many illnesses, which may result in death. The July 1996 Monthly Situation Report by the United Nations Department of Humanitarian Affairs describes the health situation as follows:

> "The most common reported illnesses continued to be malaria, dysentery and respiratory diseases, often linked to HIV infection. Overcrowding and lack of water for washing caused skin diseases, particularly reported in local detention centres of Kigali Rural and Kibungo Prefectures. The dry season exacerbated the problem of water shortages. The central prison of Kibungo was without water for three days until ICRC trucks began deliveries. Communal detention centres also suffered from water shortages. Thirty-one detainees died of illnesses including tuberculosis, dysentery and malaria in July. Eight women died in the Juru sectoral detention centre, Gashora Commune, Kigali Rural Prefecture, on 20-21 July, reportedly from poisoning by unknown perpetrators" (Department of Humanitarian Affairs, Rwanda. Humanitarian Situation Report, 26 August 1996).

125. In addition to these deplorable conditions of detention, many cases of ill-treatment have been reported in most detention centres. The new forms of cruel, inhuman and degrading treatment described in the preceding report (E/CN.4/1996/68, para. 93) are spreading. This is particularly true of the rape of detainees, denial of food and detention in the "amigos", which are cramped, unwholesome and dark. In several cases, such treatment has led to the death of the victims. Detainees in the prisons of Butare, Byumba, Gikondo, Gikongoro, Gitarama, Kigali and Nsinda thus complained of receiving inadequate food rations. The persons responsible for such ill-treatment are mainly soldiers and prison guards. Some of these detention centres stand out because of the atrociousness of the acts committed in them. One example is the Nyamirambo station, where juveniles were tortured.

126. Such ill-treatment has probably been the reason for many attempts by detainees to escape, most of which have ended in death. The most spectacular and tragic case was the attack by infiltrators to "release" the persons detained in the Bugarama communal prison in May 1996, in which 47 persons died.

D. Violations of the rights to physical integrity and to life

127. Violations of the rights to physical integrity and life, which had slowed down somewhat during 1996, started up again in June 1996, and were committed both by infiltrators and by APR elements.

128. Persons who have infiltrated from neighbouring States, particularly Zaire, have committed reprehensible acts, such as sabotage and murders in prefectures located in western Rwanda, as well as mine laying, which makes it dangerous to move about in some places.

129. The APR response was just as brutal. It even assumed alarming proportions, involving searches followed by raids, kidnappings, summary executions and even massacres. For example, in July 1996, APR elements carried out several search operations which, according to human rights observers, resulted in the massacre of 182 persons. These massacres were carried out mainly in Gisenyi, Ruhengeri and Kibuye prefectures. Five large-scale search operations were conducted in the following communes: Rushashi in Rural Kigali prefecture (2 July); Karago in Gisenyi prefecture (9 and 10 July); Giciye, in the same prefecture, and Nyamutera in Ruhengeri prefecture, on the same dates; Ramba, in Gisenyi prefecture, on 13 July; Giciye, Gaseke and Karago again on 23, 24 and 25 July; and Rutsiro in Kibuye prefecture on 25 July.

130. The incidents which took place on 9 July 1996 may give some idea of how these operations were carried out and the extent of the massacres. The above-mentioned sectors were cordoned off by soldiers. APR elements rounded up adult men and took them to Jomba marketplace, after they spent some time on the Vunga football pitch. According to witnesses, they assembled about 3,000 persons. They asked them to denounce the infiltrators, pretended to release them and, as they were returning home, killed or abducted many of them. The human rights observers who reported the incidents estimate that 99 persons were killed and 50 abducted.

131. The number was even higher in August 1996, when the Rwanda human rights operation reported that 130 persons had been killed in Gisenyi prefecture and over 100 had been killed in Ruhengeri prefecture. These massacres were committed by way of reprisals against the infiltrators, to whom the summary executions of 40 persons in that prefecture were attributed, according to the Gisenyi observer team.

132. The conflict between the APR and the infiltrators, which created a situation of insecurity along the borders with Zaire, moved over into that country, thus changing the basic components of the problem of the return of refugees.

III. THE PROBLEM OF THE RETURN OF REFUGEES

133. A durable solution to the problem of the return of Rwandan refugees, an ongoing concern of the international community, has eluded UNHCR, the OAU and the States of the Great Lakes region, despite the considerable efforts that they have made. The Rwandan refugee crisis has become increasingly more complicated and has degenerated into an armed conflict that threatens the security and stability of the Great Lakes region and involves the risk of causing an "implosion".

134. The truth is that the continued presence of Rwandan refugees in neighbouring countries has put all of UNHCR's strategies to the test and has created what is called the "eastern Zaire crisis".

A. Consequences of the continued presence of Rwandan refugees in neighbouring countries

135. The continued presence of Rwandan refugees in neighbouring countries has had a number of serious, closely linked consequences of several kinds: humanitarian (suffering endured), economic (depleted humanitarian assistance), political and strategic (interests of States), ecological (destruction of host States' ecosystems) and security (military and paramilitary activities of former FAR and militia members, as well as border insecurity). Security, in its subregional dimension, seems to be taking the lead over the other consequences. It primarily takes the form of worsening trans-border inter-ethnic conflicts, as reflected in interference by the presence of refugees in local inter-ethnic conflicts and their incursions into Rwanda.

1. Interference of the Rwandan refugee presence in local inter-ethnic conflicts

136. Because they have the same ethnic background as the populations of the host territories, the Rwandan refugees are involved in local inter-ethnic conflicts whether they like it or not. They are the victims of inter-ethnic conflicts in Burundi and both actors and victims in Zaire.

(a) Rwandan refugee victims of the conflicts in Burundi

137. Following the renewed outbreak of fighting between Hutus and Tutsis in Burundi, the Rwandan refugee camps have been the target of attacks by government troops and Tutsi militias. In his last report (E/CN.4/1996/68), the Special Rapporteur had already drawn attention to the attack by the latter against the Mugano refugee camp in northern Burundi, which led to the exodus of 17,000 refugees to the United Republic of Tanzania in January 1995. Since Tanzania had already decided to close its borders, UNHCR managed to set up another camp. On the basis of a decision by the Government of Burundi in July 1996, however, the Rwandan refugee camps were closed and the refugees were forced to leave the host country. Those expulsions were followed by the spontaneous return of thousands of other refugees, who were probably afraid that they would face the same fate.

138. Between 19 and 23 July, over 15,000 refugees were thus expelled from the camps in Ngozi province. Most of the persons expelled were taken to their home communes in Butare prefecture on 26 July. According to UNHCR, 61,744 refugees subsequently voluntarily left the camps located in Ngozi and Kirundo provinces, as did over 50,000 from the Magara camp in Ngozi province and more than 9,800 from Rukuramgabo camp. By late August 1996, all the Rwandan refugee camps in Burundi had been closed.

139. When the returnees arrived in the transit camps, they were received by APR soldiers and subjected to "searches" and "screening" in an attempt to find persons suspected of genocide and infiltrators. The searches led to the arrest of 366 refugees returning from Burundi. The ratio between the number of returnees and the number of persons arrested is as follows: nearly 15,000 entries and 366 arrests, i.e. 0.5 per cent of the total. It should be noted that, among the persons arrested, there were more voluntary returnees

than persons who had been expelled. Of the 366 persons, 98 had been expelled and 268 were voluntary returnees, i.e. nearly 70 per cent of the total. It should also be noted that former local authorities were arrested, including three burgomasters and two police officers. All were accused of having taken part in the genocide.

(b) Rwandan refugees as actors in or victims of the conflicts in Zaire

140. Unlike Burundi, where Rwandan refugees are victims, since they are being forced to leave the country of asylum, some persons believe that, in Zaire, they are actors or, more specifically, that they are involved in the conflict (case of militia and former FAR members), while others, particularly many genuine refugees, regard them as hostages and victims of the crisis that has recently developed in Zaire. The situation in the Kivu region was very alarming at the time because it had been greatly complicated by a combination of three basic factors.

141. The first factor is the exacerbation of inter-ethnic rivalries dating from before the 1993 Burundi and 1994 Rwandan conflicts. Kivu had already been the scene of very complex inter-ethnic fighting between, on the one hand, the so-called indigenous populations (Nyanga, Hunde, Bembe, Shi, etc.) and the so-called alien populations, commonly known as Banyarwanda, who arrived as a result of successive migratory flows, and, on the other hand, between Tutsis and Hutus, ethnic groups which both belong to the Banyarwanda. The events which took place in Burundi in 1993 and in Rwanda in 1994 thus sharpened the inter-ethnic rivalries between the two enemy brothers and made them fight even harder in their struggle for power.

142. A second factor is that the Rwandan conflict moved over into Zaire following the large-scale arrival of Hutu refugees in that country, first in Northern Kivu and then in Southern Kivu. The no less large-scale return of Tutsis to Rwanda made it clear not only that new inter-ethnic rivalries took precedence over old ones, but also that the newcomers, i.e. the former masters of Kigali and their subordinates, particularly the Interahamwe and former FAR members, "dominated". They in fact had the benefit of an entire military arsenal and the collaboration of the Virunga Farmers and Herders Association (MAGRIVI). The militias thus sowed terror both inside the camps and outside, especially against the local Zairian population. This is why the Special Rapporteur on the situation of human rights in Zaire attributes responsibility for the violence to them, stating that: "The Hutu militia known as the Interahamwe have been the main instigators of violence" (E/CN.4/1997/Add.1, para. 38).

143. The third factor is that the inter-ethnic Hutu-Tutsi conflict spread to other ethnic groups, thus complicating and further aggravating the situation. The Special Rapporteur on the situation of human rights in Zaire goes into great detail in giving examples of the acts of violence committed in 1995 and 1996 by the Interahamwe and MAGRIVI against the Zairian Tutsis and other local populations, with large losses of human life (E/CN.4/1997/6/Add.1, para. 40, and Human Rights Watch/Africa and International Federation of Human Rights Leagues, Zaire: forcés de fuir. Violences contre les Tutsis au Zaïre, New York/Paris, July 1996). The author places so much emphasis on this matter that we have to refer to it. It will, however, simply be pointed out that the

situation is further complicated by the barely concealed wish of the local authorities to expel Zairians, particularly indigenous or Rwandan-language Tutsis. The only alternative they appear to have is "the choice between expulsion and death" (E/CN.4/1997/6/Add.1, para. 68). Those who opted for expulsion or who were refoulés - which came down to the same thing - were in an unusual position similar to statelessness: for the Zairians, they were "Rwandans returning home" and, for the Rwandans, "Zairian refugees in Rwanda". This solution suited the Hutu extremists who had helped achieve it, probably for fear that the Tutsis might bring in outside support for the Rwandan Government or betray them in the event of an attack against Rwanda.

2. Incursions by refugees against the Rwandan Government

144. The continuing presence of Rwandan refugees near Rwandan borders is a constant source of insecurity and tension. The incursions are a matter of concern both because of the forms they take and because of the reactions to which they give rise.

(a) Forms of the incursion

145. The incursions by former FAR and militia members into Rwandan territory from Zaire take two forms: infiltrations and mine laying.

(i) Infiltrations

146. Starting in June 1996, several attacks by infiltrators were committed in prefectures in western Rwanda, causing large numbers of victims. Of 53 persons killed in June, 49 died during 3 large-scale operations conducted jointly by former FAR and militia members in Gisenyi, Kibuye and Rural Kigali prefectures. The first took place in the commune of Rwamatamu, in Kibuye prefecture, during the night of 18 to 19 June, when a group of 40 to 50 infiltrators from Ijwi Island in Zaire attacked a village located in Bunyamanza district in southern Kibuye prefecture, near Lake Kivu. This attack killed 14 persons, including an APR soldier. On 24 June, another group of about 10 unidentified persons attacked 3 houses in Nyabitare district in the commune of Rwamatamu (Rural Kigali prefecture), killing about 10 persons, including 2 elderly persons and 2 children. On 27 June, still another group of 30 armed persons carried out attacks lasting nearly two hours in the districts of Kiruma, Muremure and Kinihira in Gisenyi prefecture, killing 28 persons with machetes and grenades.

147. In July, the observers received information on other attacks resulting from infiltrations. On 17 July, for example, 6 militiamen attacked a dwelling in Gatyazo district in Cyangugu prefecture, killing 1 person, the 6 other occupants having managed to flee. In the night of 18 to 19 July, 10 persons were killed by a group of 30 to 40 infiltrators in Butare district in south-western Gisenyi prefecture. On 16 July, a group of seven unidentified persons murdered the sectoral adviser, together with his wife and his sister-in-law, in Kibuye prefecture. On 19 July, an Electrogaz official and his wife were shot in Marebe district in Cyangugu prefecture by infiltrators apparently belonging to the Interahamwe militias. Other more or less large-scale attacks were also reported in Gikongoro, Kibungo, Ruhengeri, Byumba, Rural Kigali and Gitarama prefectures. In addition to these

infiltrations in July, others took place in August, with the most significant occurring in Gisenyi and Ruhengeri prefectures, as stated above. The infiltrations were also used for mine laying.

(ii) Mine laying

148. Mine laying increased as of April 1996 and has taken place mainly in the prefectures bordering on Zaire. The most serious incidents, involving mine explosions, occurred in Cyangugu prefecture, specifically in the Mubano sector on 14 April and in Cymbogo on 20 April. During these incidents, two APR vehicles blew up on contact with mines, killing two persons and wounding several. In Bugerama on 20 April, a mini-bus hit an anti-personnel mine, killing five persons. Other mine-related incidents were reported in Gisenyi prefecture. On 15 April, a vehicle belonging to a non-governmental organization hit and set off a mine in the Kora sector in the commune of Mutura. In Ruhengeri prefecture, two similar incidents also took place on 8 March in Cyabingo and on 14 March in Kinigi.

(b) Consequences

149. As a result of these incidents, there has been a cut-back in the activities of humanitarian organizations and United Nations agencies, including the Human Rights Field Operation in Rwanda, which took security measures prohibiting its observers from driving on unpaved roads, which are particularly well suited to mine laying. Incidents involving mine explosions nevertheless dropped off as of June, probably because of the strengthening of security measures by the APR. In June, it increased the number of patrols and began to conduct searches in the hills and communes to find infiltrators, as noted above. The conflict between the APR and the infiltrators completely called into question UNHCR's strategies.

B. Failure of the strategies of the Office of the United Nations High Commissioner for Refugees

150. After the failure of two diplomatic attempts to settle the Rwandan refugee crisis at the Cairo (29-30 November 1995) and Tunis (18-19 March 1996) Conferences, organized under the auspices of the Carter Center in Atlanta, UNHCR adopted two sets of strategies. The first, which was to be selective, ended in failure and the second, which was new and was based on a comprehensive approach, also did not survive the crisis in Zaire.

1. The "selective" strategies

151. In order to deal with the obstruction of the Rwandan refugees' return, which was caused primarily by acts of intimidation in the camps, UNHCR adopted measures at the end of 1995, in cooperation with the host countries concerned, that turned out to be inadequate. Some were aimed directly at the intimidators, while others were designed to promote repatriation.

(a) Measures aimed at the intimidators

152. These measures were designed to separate the intimidators from the other refugees in order to enable the latter to decide freely whether or not they wanted to return to Rwanda.

153. Intimidators are refugees in the camps who spread propaganda for the non-return of refugees and/or exert physical or psychological pressure on them to force them to give up the idea of returning to Rwanda. The intimidators come mainly from the ranks of former FAR and militia members and persons linked to the former regime. According to an Amnesty International report (AFR/EFAI/2 January 1996), the intimidators operate mainly by means of tracts. One tract, distributed in the Mugunga camp in September 1995 and translated from Kinyarwanda, stated:

> "Of all those that UNHCR repatriated, not one is still alive ... The Tutsi have taken over the Hutus' belongings and those who dare speak out are massacred mercilessly ... UNHCR wants to repatriate the refugees as it usually does, illegally, knowing full well that they will be killed. Dear brother, we know you have problems, but suicide is no solution. Candidates for death can go home. They have been warned."

154. At the Regional Conference on Assistance to Refugees, Returnees and Displaced Persons in the Great Lakes Region held in Nairobi on 7 January 1995, it was decided that persons suspected of genocide and intimidators should be separated from genuine refugees. That strategy was integrated into the Plan of Action adopted by the Bujumbura Regional Conference on Refugees and Displaced Persons in the Great Lakes Region, held in February 1995. On the spot, however, it turned out to be difficult, if not impossible, to identify the persons covered by these categories. Moreover, even if it had been possible to identify them, their separation or removal from the camps would have been dangerous. Thus, when the Zairian authorities arrested 12 refugees regarded as intimidators in the Mugunga camp on the basis of a list drawn up and provided by UNHCR, the refugees in the camp became aggressive towards UNHCR officials, going as far as to threaten them during the attempted census they had wanted to conduct.

155. The planned measures against the intimidators generally did not yield the expected results. Only a few dozen intimidators were arrested out of the tens of thousands operating in the camps. From mid-December 1995, when the implementation of these measures began in Zaire, until May 1996, UNHCR reported the arrests of 34 intimidators. The number was hardly more than 41 in September 1996, according to the latest report of the Special Rapporteur for Zaire (E/CN.4/1997/6/Add.1). The failure of the strategy of removing the intimidators from the camps forced UNHCR to consider other measures to encourage the repatriation of Rwandan refugees.

(b) Measure to encourage repatriation

156. These measures, which relate mainly to information campaigns for repatriation, are either incentives or deterrents.

(i) Incentives

157. As part of its policy to encourage the voluntary repatriation of Rwandan refugees, UNHCR set up video information centres in March 1996 containing information on possibilities of assistance for returning to Rwanda. A document prepared by the UNHCR Public Information Section goes into considerable detail about the possibilities available to the refugees: "Five centres - named Ogata, Mandela, Nyerere, Martin Luther King and Gandhi - were inaugurated at Kibumba camp in the Goma region. Each of the centres - tarpaulin over wooden frames built for 300-400 people - is equipped with televideos, radios and public address systems. The project involves plans for 16 such centres in the Goma camps and others in the Bukavu and Uvira regions. On the whole, the films shown about life in several prefectures in Rwanda have been well received by the refugees, who come from these prefectures".

158. It must, however, be recognized that the strategy of visits organized by UNHCR in and to the camps has not yielded the expected results. Mistakes have sometimes been made that have not made UNHCR's task any easier. For example, one of the two refugees taken to Rwanda by UNHCR to check out the situation was arrested in May 1996, as soon as he arrived in his home commune, on charges of having taken part in the genocide. Such an incident could only have had a negative impact on the programme of incentives to return. Following this new failure, UNHCR undertook to implement deterrent measures.

(ii) Deterrent measures

159. These measures are intended to set up obstacles to the ongoing presence of refugees in the camps. As is known, most of the refugees have set up survival structures which are both commercial (restaurants, shops, transport, etc.) and social (schools, dispensaries, etc.). Some of these activities offer obvious advantages, if only because they reduce food and financial dependence and eliminate idleness, which leads to crime. However, as these activities prosper, they encourage the refugees to stay in the camps instead of returning to Rwanda. In order to remedy this situation, UNHCR undertook to dismantle these structures and decided to close the schools and shops operating in the camps. It also decided to reduce the daily food ration given to each refugee, lowering it from 2,000 to 1,500 calories.

160. These measures were not well received by the refugees and by a number of humanitarian organizations. The former denounced them, particularly through the Rassemblement pour le retour des réfugiés et la démocratie au Rwanda (Union for the Return of Refugees and Democracy to Rwanda) (RDR), calling them "disguised forced repatriation". The latter considered that these measures were serious violations of some fundamental human rights, particularly the right of children, including refugee children, to education. Moreover, these deterrent measures, like the above-mentioned persuasive or incentive measures, have not brought about a significant return of refugees to Rwanda. According to UNHCR, in 1995 and 1996, only 362,000 refugees were repatriated, including 196,000 "new" and 166,000 "old" refugees. There were still 1,970,000 Rwanda refugees in Zaire and 535,000 in the United Republic of Tanzania. A new repatriation strategy thus had to be adopted.

2. The comprehensive strategy

161. The new strategy, intended to be both comprehensive and integrated, was adopted at a meeting of the UNHCR Executive Committee on 11 October 1996. It proposes four sets of measures: concerted measures aimed at dealing with the present situation; measures applicable to each individual country; measures to be taken jointly with the International Tribunal for Rwanda; and measures to be applied by the international community.

(a) Measures to be applied in an integrated manner

162. These measures comprise four main elements:

(a) UNHCR encourages the selective and progressive closure of the camps for the Rwandan refugees and active assistance in their repatriation. These measures must be implemented in conjunction with the exclusion clause applicable to intimidators and other leaders in the camps;

(b) UNHCR is to assist the Governments of the host States in determining on a case-by-case basis the status of persons not wishing to return to Rwanda. In doing so, they will automatically exclude asylum for persons sought by the International Tribunal against whom there is sufficient evidence of participation in the genocide. Such persons will have to be transferred to other locations for interrogation;

(c) Those persons losing their refugee status will cease to enjoy the international protection of UNHCR;

(d) In accordance with the Bujumbura Integrated Plan of Action, the above measures should be applied through close cooperation between the country of origin, the host countries and the international community.

(b) Measures to be applied in each of the countries concerned

163. These measures concern the country of origin, Rwanda, and the two host countries, the United Republic of Tanzania and Zaire.

(i) Rwanda

164. The Rwandan Government is to: (a) continue to promote the repatriation and resettlement of the refugees, in particular through an appropriate information campaign and the implementation of measures to reassure the refugees, in conformity with the Arusha Accord; (b) ensure the prosecution of persons suspected of genocide, under the Genocide Act, in order to break with the tradition of impunity; and (c) continue to cooperate with the Human Rights Operation in Rwanda, whose presence must be reinforced.

165. For the large-scale return of the refugees, food stocks will have to be constituted with UNHCR assistance. Furthermore, UNHCR will have to: (a) draw the attention of the authorities to real-estate and land ownership disputes; and (b) in agreement with the donor community, give emphasis to aid for the returnees, including specific projects for vulnerable groups. This will apply particularly to women, for whom a comprehensive programme entitled "Initiative

for Rwandan women" is due to start in 1997. This programme aims at promoting the economic power of women, strengthening social structures in the post-genocide society and facilitating the process of national reconciliation within the country.

(ii) United Republic of Tanzania

166. The Tanzanian Government is requested to: (a) initiate, with UNHCR assistance, the process of case-by-case consideration of requests from candidates for asylum, excluding those persons against who there is sufficient evidence of participation in genocide. A recently created separation camp will be available for this purpose; (b) tighten security around the camps because of the risks involved in such an exercise; and (c) afford protection to innocent persons with good reasons for not returning to Rwanda, not with a view to their integration, but for their eventual repatriation.

167. UNHCR, for its part, is committed to acting in concert with the international community to assist the United Republic of Tanzania in the rehabilitation of the environment and infrastructure destroyed by the presence of refugees in the part of its territory concerned.

(iii) Zaire

168. The Government of Zaire and UNHCR are requested to:

(a) Proceed with the selective and gradual closure of the camps. Those persons wishing to return to Rwanda will be given logistical support for their return and reintegration; the others will have to be separated from them by a screening process, after which those eligible for international protection will continue to be protected by the Government, without this in any way entailing their local integration;

(b) Considering the dangers involved in implementing this strategy, provision has been made for a number of accompanying measures: the Government of Zaire is to increase and strengthen the Zairian contingent, initially set at a maximum of 2,500 soldiers, for security in the camps. International aid will be provided to expand the contingent and ensure its training and supervision. There will have to be a proportional number of international security advisers, with specific commitments from the Governments concerned;

(c) Interested Governments - with UNHCR assistance - should agree with the Zairian authorities on specific measures to deal with cases of the manipulation of the refugees by intimidators (for example, violent sabotage of census operations) and to ensure that aid is not diverted to former FAR members still militarily active in North Kivu and South Kivu. With the assistance of the international community, the Government of Zaire must be called upon to dissolve the so-called "banana plantation" headquarters of the former FAR members and dismantle its military facilities. Zaire will cooperate fully with the International Tribunal;

(d) UNHCR must immediately inform the refugees in the camps located in Zaire that violent sabotage of its recent attempt to count the refugee population is an intolerable affront to its mandate, confirming the bad faith

of the camp leaders. A broad information campaign will have to be directed towards making the refugees aware of the fact that the blockage created by those leaders had led to a situation where food aid would be strictly controlled and reduced, especially to prevent it from being diverted. This measure will be linked stepwise to the gradual closure of the camps. UNHCR, with strong support from Governments, must seek the full cooperation of the Zairian Government in this regard;

(e) In order to respect the fundamental right of all children to education and to solve the problem of repatriation, the Government of Zaire will have to reopen primary schools for the refugee children and provide the means to protect them against manipulation and delinquency.

169. The Tripartite Commission (Rwanda/Zaire/UNHCR) will have to ensure greater coordination in the operation to close the camps. Lastly, in cooperation with donors and partners, UNHCR must endeavour to increase the assistance now being provided for the rehabilitation of the environment and infrastructure destroyed by the presence of the refugees in Zaire.

(c) Measures to be applied in cooperation with the International Tribunal

170. Together with the procedures to identify persons subject to the exclusion clause, every effort will have to be made to secure full support for reinforcing the activities of the International Tribunal to investigate and search for suspects.

171. In agreement with the Tribunal, UNHCR will determine the modalities for strengthening their cooperation. Governments have a central role to play in implementing the procedures aimed at separating and excluding persons suspected of genocide from international protection and bringing them before the Tribunal.

(d) Measures to be taken by the international community

172. The close link between the refugee crisis and peace in the Great Lakes region means that its problems have to be solved through the adoption of an integrated strategy encompassing the security, judicial, political and humanitarian dimensions. UNHCR intends to continue its close cooperation with the United Nations and the Organization of African Unity in this area. In addition to the financial aid expected from them, Governments must be requested to increase their assistance to Rwanda with a view to creating conditions of security there (for example, assistance in the administration of justice) and to provide incentives for the refugees to return. Governments will have to maintain a balance between the aid granted to refugees and assistance for the survivors of the genocide. They will have to bear in mind the major objective of national reconciliation.

173. Governments will also have to be requested to extend their full support to Rwanda, the United Republic of Tanzania and Zaire in the implementation of the measures described above and to take all necessary steps to deal with present tensions. They are invited to take care of the damage caused by the refugees to the environment and infrastructures in those three countries.

174. UNHCR had not yet begun implementing that ambitious programme when the crisis erupted in eastern Zaire.

C. The crisis in eastern Zaire

175. The Zaire crisis has jeopardized the UNHCR strategy that was beginning to give the international community hope. The forms of the crisis and especially its consequences in terms of the large-scale return of refugees therefore need to be considered.

1. Forms of the crisis

176. The Zaire crisis has two main forms, both closely linked with the problem of Rwandan refugees. It is at once a politico-military and a humanitarian crisis.

177. The politico-military dimension relates quite obviously to the armed clashes between the Banyamulengue Tutsi rebels, supported by the APR, and the Zairian armed forces. The conflict has its origin, as indicated above, in the massive and continued presence of Rwandan refugees in Zairian territory: the military and paramilitary activities of the former FAR members and the Interahamwe are not irrelevant in this, having served as a powerful catalyst for a latent internal crisis in the host country.

178. The second dimension - a consequence of the first - is the massive outflow of refugees heading first towards regions that were inhospitable and inaccessible to humanitarian organizations, to be confronted with hunger, thirst and diseases of all kinds, and then the departure of some of them for Rwanda. After long hesitation, the international community managed to agree in principle on the creation of a multinational humanitarian force, but unfortunately it could not be deployed because of the lack of political will and consensus among the parties involved and the main actors in the conflict. This explains the large-scale return of refugees.

2. Consequences of the crisis: the large-scale return of refugees

179. A distinction should be made between the refugees who returned from Zaire and those repatriated from the United Republic of Tanzania following the situation created in Zaire.

(a) The return from Zaire

180. The large-scale return of refugees from Zaire began on 15 November 1996. In the space of one week, nearly 600,000 refugees returned to Rwanda. They were generally accommodated in people's homes, some of them first passing briefly through transit camps.

(i) Reception in transit centres

181. The transit centres call for no particular comment, having been used very little for the repatriation of refugees from Zaire. When they were in operation, it was for less than 24 hours and at below their intake capacity.

To give just one example, the number of returnees received at the Gikondo centre (Kicukiro commune in the Kigali City prefecture) was 200 to 300 a day, whereas the centre can accommodate 1,000 people.

182. Instead of taking in all returnees, some of the transit centres specialized in catering for children and their reintegration into their family environment. At the Gihembe centre in the Byumba prefecture, the children were looked after by ICRC and World Vision. Between 18 November and 8 December 1996, for example, care was given to 784 children aged 1 to 16, many being in a critical condition due to malnutrition and dehydration. Officials reported one child death at the centre. By 8 December, of the 784 children received at Gihembe, only 67 had not yet rejoined their families.

(ii) Reception in people's homes

183. Most of the refugees returning to Zaire have been looked after by relatives, friends or neighbours who had stayed in Rwanda. UNHCR, in cooperation with the Government authorities and non-governmental organizations, distributed food and seeds to each commune in turn. In many cases, the hosts of the returnees shared their meagre resources with them while waiting for provisions to be distributed. In addition, the local authorities and non-governmental organizations worked together in operations to register and identify the children and arrange for families to be reunited. They also found accommodation for returnees without families. Generally speaking, the reception and reintegration proceeded smoothly, despite the lack of equipment and especially food.

184. Few cases of deaths or killings were reported during repatriation. By 6 December 1996, the Human Rights Operation in Rwanda had received confirmation of 12 deaths. Those deaths are, of course, to be deplored, but the number, relative to the total of 600,000 returnees, was lower than had been feared. In addition, however, there were a number of abductions and disappearances, in particular the abduction of the Bishop of Ruhengeri diocese, Mgr. Phocas Nikwigiza, who disappeared on 30 November 1996 on returning from Goma.

185. There have, on the other hand, been numerous arrests of returnees. Although rare at the beginning, these gradually increased in number, from 162 at the end of November 1996 to 700 by 15 December. The prefectures most concerned are those of Gisenyi, Rural Kigali and Ruhengeri, which together account for nearly 565 arrests. Most of the persons arrested are former FAR members. The others are individuals recognized as having clearly taken an active part in the genocide and other crimes against humanity. The persons detained thus include a former vice-president of the National Assembly, a former deputy prefect, six former mayors and a former district officer. In all, there are 14 politicians, among whom 6 appear on the list of alleged perpetrators of genocide belonging to the first category.

186. It is important to emphasize that, in some cases, freedom is the rule and arrest the exception, formal arrests taking place only where the returnee is at risk and needs to be protected from reprisals. Thus, many persons identified as former FAR members have been neither threatened nor arrested. In some communes, however, they have been given special identity cards and

must report once a week to the local gendarmerie. This is the case in the communes of Saké and Mugesera, in Kibungo prefecture. Nevertheless, considerably more arrests can be expected in the weeks to come, according to a statement by the authorities as reported by human rights observers.

(b) The return of refugees from the United Republic of Tanzania

187. Following the announcement by the Tanzanian authorities that the camps would be closed by 31 December at the latest, tens of thousands of refugees left them, heading further into the interior of the United Republic of Tanzania. They were immediately turned back by the army and took the road for Rwanda, like the refugees from Zaire a month earlier.

188. Between 14 and 21 December 1996, more than 300,000 refugees thus returned on foot or in trucks, which were made available in insufficient numbers and could transport only the most vulnerable refugees, including old people, the sick and children, who were directed towards transit centres such as the one at Nyakarambi. Most of the returnees went to Kibungo and Mutara prefectures. In all, Kibungo prefecture was to receive nearly 300,000 refugees and Mutara prefecture about 135,000, i.e. 95 per cent of those expected to be returning from the United Republic of Tanzania. The commune of Rusumo alone was to receive more than 100,000 returnees, while Rukira commune was to receive 50,000.

189. During the repatriation, the authorities refused to allow some non-governmental organizations and vehicles to be on the roads, arguing that the massive presence of motor vehicles had caused traffic jams and prevented the harmonious repatriation of refugees from Zaire in November. The Human Rights Operation in Rwanda therefore had only partial access to the areas through which most of the returnees were passing and the observers had great difficulty in evaluating the human rights situation during this forced repatriation. It seems from piecemeal reports that, unlike the repatriation from Zaire in November, the repatriation from the United Republic of Tanzania took place in generally bad conditions, giving rise to several incidents between local people and returnees. In a report dated 23 December, the Human Rights Operation provides several examples of physical assaults resulting in injuries or deaths and one attempted lynching by the local population which was prevented by the official responsible for the area.

IV. RECOMMENDATIONS

190. The recommendations made here duly reflect the measures to be taken in the short and medium term. The measures relate primarily to the prosecution of persons suspected of genocide, the cessation of human rights violations, social rehabilitation and a political settlement of the Great Lakes crisis.

A. Prosecution of persons suspected of genocide

191. The United Nations should:

(a) Provide the International Tribunal with sufficient human and material resources for it to be able to carry out its mission as effectively as possible;

(b) In cooperation with other relevant organizations, increase its assistance to the Rwandan Government for the purpose of reactivating and reconstituting the entire judicial system;

(c) Urge States hosting persons sought by the International Tribunal to hand them over for trial.

192. The United Nations should, as recommended in the preceding report (E/CN.4/1996/68, paras. 141 and 142):

(a) Establish an appropriate legal framework to ensure the protection of widows, women raped during the genocide, orphans and unaccompanied children and to guarantee their fundamental rights. In this connection, it would be appropriate to provide the means for them to be compensated by establishing a special fund;

(b) Provide more substantial assistance to the Rwandan Government for programmes aimed at the social and psychological rehabilitation of the above-mentioned vulnerable groups of people by supplying it with the equipment, funds and expertise needed for the full implementation of such programmes;

(c) Recommend that the Rwandan Government should take appropriate measures, in particular discriminating in favour of women, children and the Twas, to ensure their social rehabilitation and well-being while respecting the equality of citizens before the law.

B. Cessation of human rights violations

193. The United Nations should:

(a) Call on the Rwandan Government to take appropriate steps to ensure full respect for human rights and fundamental freedoms. It should in particular urge the Rwandan authorities to take appropriate measures to ensure:

(i) Observance of the forms and procedures provided for by the international rules governing the arrest and detention of suspected criminals;

(ii) Observance of freedom of expression and, in particular, the independence of the judiciary, two fundamental principles which are essential for the establishment of democracy and the rule of law;

(iii) Punishment of all human rights violations in order to break with the tradition of impunity;

(b) Provide appropriate and adequate funding for the Human Rights Operation in Rwanda with a view to increasing the number of observers, as already recommended in the preceding report, from 147 (the figure initially

planned, but never achieved) to 300, enabling them simultaneously and satisfactorily to ensure the supervision, reception and repatriation of refugees and especially to deal with their massive return.

C. Social reintegration

194. The United Nations should recommend that:

(a) The Rwandan Government, as recommended in the preceding report, should continue to conduct and intensify campaigns to raise awareness among the population and thus avoid the perpetration of reprisals against returnees. Administrative measures accompanied by effective sanctions should be adopted to that end;

(b) The school and academic infrastructure should be revitalized through the input of human and material resources. Special assistance should be allocated for the re-establishment of the National University of Rwanda, and especially its law faculty, which will have the task of training lawyers to strengthen the judiciary;

(c) Member States should effectively make available to the Rwandan Government all funds promised at the Geneva Round Table Conference and provide further assistance to enable it to implement programmes for rebuilding economic and social infrastructures.

D. Comprehensive settlement of the Great Lakes crisis

195. The United Nations should:

(a) Urgently convene, in agreement with the Organization of African Unity, an international conference on the Great Lakes with a view to solving the problems of the region as a whole and, if necessary, arrange for a special session of the Commission on Human Rights to consider the specific dimension of the protection and promotion of human rights;

(b) Adopt a comprehensive strategy based on an integrated approach to the problems of the Great Lakes subregion aimed at (i) achieving a peaceful and lasting settlement of the Great Lakes conflict; and (ii) preventing the outbreak of a general conflict threatening the stability of the region as a whole.